IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5097 of 2002

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRISHKUMAR LAXMISHANKAR THAKAR

Versus

SIDDHPUR TALUKA SAHKARI SALE & PURCHASE SANGH LTD.

Appearance:

1. Special Civil Application No. 5097 of 2002

MR MAHENDRA K PATEL for Petitioner No. 1

..... for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/01/2003

ORAL JUDGEMENT

Heard the learned advocate.

The petitioner, an employee of the

respondent-Cooperative Society challenges the judgment and order dated 27th February, 2001 passed by the Gujarat State Cooperative Tribunal in Appeal No. 66 of 1996.

It appears that the petitioner was appointed by the respondent-Society and was posted at its Tundav Branch. The petitioner was the only employee posted at Tundav Branch and a peon was appointed to assist him. The petitioner was alleged to have misappropriated goods worth Rs. 18,500/= belonging to the Society. The Society, therefore, filed Lavad Suit No. 1926 of 1988 before the Board of Nominees for recovery of the damages. The said suit was renumbered as 701 of 1990 and was decreed in the year 1993. On an appeal preferred by the petitioner, the said decree was set-aside and the suit was remanded for retrial from the stage of the evidence of the petitioner. After the remand, the suit was numbered as Lavad Suit No. 832 of 1994 and was tried further. The petitioner was allowed to adduce evidence. After the trial, the suit was allowed under the judgment and order dated 27th December, 1995. The petitioner was ordered to pay a sum of Rs. 18,500/= with interest @ 12% p.a and the costs of the suit. Feeling aggrieved, the petitioner preferred above Appeal No. 66 of 1996 before the Tribunal which too came to be dismissed on 27th February, 2001. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Patel has submitted that the liability of the petitioner was not adjudicated. Hence, the suit before the Board of Nominees under section 96 of the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as, "the Act"] was not maintainable. Unless there were an adjudication by a Civil Court of competent jurisdiction, no suit for recovery of dues under section 96 of the Act would be maintainable. The Board of Nominees had no jurisdiction to entertain and decide the suit. Hence, the decree passed by the Board of Nominees without the jurisdiction requires to be quashed and set-aside. Mr. Patel has submitted that though the petitioner has raised specific plea about the jurisdiction of the Board of Nominees, the learned Tribunal failed to consider the same. Mr. Patel has further submitted that the Registrar of Cooperative Societies could have exercised jurisdiction under section 93 of the Act. But in absence of any report of the auditors under section 84 of the Act or report made either under section 86 or 87 of the Act or a report made by the Liquidator under section 110 of the Act, even the said power under section 93 could not have been exercised. Mr. Patel has further submitted that the

respondent-Society had failed to prove guilt against the petitioner, hence, no recovery could have been ordered against the petitioner. Mr. Patel has submitted that the Board of Nominees as well as the Tribunal have failed to appreciate the evidence correctly and have erred in holding the petitioner to be guilty. Mr. Patel has taken me through the pleadings and the evidence.

I am afraid I am unable to agree with Mr. Patel. It is section 96 of the Act which empowers the Registrar or its Nominee to adjudicate the dispute, inter alia, touching the business of the Society, if parties to such dispute are, inter alia, the Society and any of its past or present servants or nominee. Thus, section 96 of the Act specifically provides for a Forum to resolve the dispute between the Cooperative Society and its servants with respect to the business of the Society. In my view, the dispute regarding loss of goods of the society amounts to a dispute in relation to the business of the Society. The exercise of jurisdiction by the Board of Nominees, in the present case therefore, cannot be said to be bad or illegal.

As to the guilt of the petitioner, the same has been established before the Board of Nominees. In exercise of supervisory jurisdiction under Art. 227 of the Constitution of India reappreciation of evidence is not permissible nor this Court is supposed to substitute the finding of fact recorded by the Board of Nominees and confirmed by the Tribunal. Hence, this Court cannot interfere with the finding of guilt established against the petitioner and the extent of loss suffered by the Society. No interference, therefore, is warranted.

No other contention is raised before me. The petition is dismissed in limine.

{Miss R.M Doshit, J.}

Prakash*